

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 139

THE UNITED STATES OF AMERICA, APPELLANT

vs.

STEAMSHIP "PANOIL"

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF LOUISIANA

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Libelant reserves the right to amend this libel so as to set out with more particularity other causes of negligence on the part of the S. S. "Panoil."

## IV

Libelant further alleges that S. S. "Panoil" is now, or is about to be, within the Eastern District of Louisiana and within the admiralty and maritime jurisdiction of this honorable court.

## V

Libelant alleges amicable demand upon the S. S. "Panoil," or its operators, without avail, and that it has a claim against said steamship for the sum of two thousand dollars (\$2,000.00).

## 4

## VI

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

## VII

Wherefore, libelant prays that process herein, in due form of law, according to the course and practice of this honorable court, in causes of admiralty and maritime jurisdiction, may issue against said S. S. "Panoil," her engines, tackle, apparel, and equipment of whatsoever nature, and that all persons claiming any title or interest herein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and after due proceedings had, that there be judgment in favor of libelant, for and on account of and in full measure of damages hereinbefore set out, aggregating two thousand dollars (\$2,000.00), together with interest at five per cent per annum from judicial demand, and that the said S. S. "Panoil," her engines, tackle, apparel, equipment, etc., may be condemned and sold to pay the same; and that libelant may be accorded such other and further general relief as in law and justice it may be entitled to receive and the court competent to grant.

(Signed) EDOUARD F. HENRIQUES,

*Special Assistant in Admiralty to the United States Attorney for the Eastern District of Louisiana, Proctor for the United States of America.*

## 5

[Jurat showing the foregoing was duly sworn to by Edouard F. Henriques. Omitted in printing.]

*Order*

Let admiralty process issue as prayed for. New Orleans, La., Aug. 16, 1922.

(Signed)

H. J. CARTER, *Clerk.*

6 In United States District Court

[Title omitted.]

*Claim. Filed Aug. 31, 1922*

Now comes P. J. Dromgool, who states that he is superintendent engineer at New Orleans for Pan American Petroleum & Transport Company, owner of the steamship "Panoil," seized herein, and as such is lawful bailee for the owner thereof, and he now prays for a restitution of the same to Pan American Petroleum & Transport Company, owner, upon its furnishing bond conditioned as required by law.

(Signed) P. J. DROMGOOL.

Sworn to and subscribed before me this 30th day of August, 1922.

[SEAL]

(Signed)

WALTER CARROLL,

*Notary Public.*

(Signed)

TERRIBERRY, RICE & YOUNG,

*Proctors for Claimant.*

7 In United States District Court

[Title omitted.]

*Exception to libel. Filed Aug. 31, 1922*

Now into court, through its undersigned proctors, comes Pan American Petroleum & Transport Company, claimant, herein appearing solely for the purpose of this exception and excepts to the libel herein, and for cause of exception shows:

That this court sitting as a court of admiralty is without jurisdiction.

Wherefore, exceptor prays that this exception be maintained and that the libel be dismissed, and for all costs.

(Signed)

TERRIBERRY, RICE & YOUNG,

*Proctors for Claimant and Exceptor.*

I certify that the above exception is, in my opinion, well founded in law and is not interposed for delay.

(Signed)

GEO. H. TERRIBERRY.

7½ [Title omitted.]

In United States District Court

*Minute entry of judgment*

This cause came to be heard on the exception to the jurisdiction of the court;

Present: Edouard F. Henriques, Esq., special asst. to the U. S. attorney in admiralty, proctor for libellant; Messrs. Terriberry, Rice & Young, proctors for exceptor;

When after hearing argument of counsel, and the court being of the opinion that the law is in favor of exceptor:

It is ordered, adjudged, and decreed that the exception to the jurisdiction be maintained and accordingly that the libel be, and it is hereby, dismissed, at libellant's costs.

8

In United States District Court

[Title omitted.]

*Judgment. Filed April 28, 1923*

This cause came on to be heard on the exception to the jurisdiction of the court;

Present: Edouard F. Henriques, Esquire, special asst. to the U. S. attorney in admiralty, proctor for libellant; Messrs. Terriberry, Rice & Young, proctors for exceptor;

When, after hearing argument of counsel and the court being of the opinion that the law is in favor of exceptor:

It is ordered, adjudged, and decreed that the exception to the jurisdiction be maintained and accordingly that the libel be, and is hereby, dismissed, at libellant's costs.

Decree rendered April 28th, 1923.

Decree signed May 2nd, 1923.

(Signed)

RUFUS E. FOSTER, Judge.

9

In United States District Court

*Affidavit of E. J. Dent, and order thereon. Filed July 5, 1923*

Before me, Edouard F. Henriques, a notary public in and for the State of Louisiana, parish of Orleans, therein residing, personally came and appeared E. J. Dent, lt. col., Corps of Engineers, U. S. A., who being duly sworn deposes and says that he is district engineer of the United States, with headquarters at New Orleans, Louisiana.

That the United States of America, through the United States Engineers, and solely as an aid to navigation, and for the purpose of creating and keeping a deep-water passage at the mouth of the Mississippi River, has built and established submerged deflecting dikes and sills, composed of willow mattresses, weighted down with stone, and a number of spur dikes which extend out into the river, all for the purpose of deflecting the current and causing it to scour out the channel at the places to which said current is deflected.

That spur dike known as No. 5, and which was damaged by the steamship "Panoil" on February 9th, 1921, is located in said river, about at the Head of the Passes, at a spot about 3,300 feet below the pilot station at Pilot Town, and consists of a cribwork of round piles, hewn walings and sawn cross braces, all securely bolted together, and with a curtain of round piles bolted against the up-

stream face; that said dike is driven into the bed of said river, and extends out about seven hundred (700) feet from the east bank, approximately at right angles to the channel, in a westerly direction and that the immediate effect of said dike is that, by slackening the current in the river, it induces deposits of sediment behind it, eventually building out the banks, thus narrowing the river and causing the current to scour out and deepen the channel, thus aiding navigation.

That the sole purpose for the building of said spur dike by the United States of America is for the purpose of aiding navigation.

(Signed) E. J. DENT,

*Lt. Col., Engineers, District Engineer.*

Sworn to and subscribed before me this 5th day of July, 1923.

[SEAL.]

(Signed)

EDOUARD F. HENRIQUES,

*Notary Public.*

*Order*

In aid of the court, and for the purpose of supplementing the description of what a spur dike in the Mississippi River is, as referred to in this libel, let this affidavit be filed and made a part of the record.

(Signed)

RUFUS E. FOSTER, *Judge.*

11 In the United States District Court

[Title omitted.]

*Petition for and order allowing appeal. Filed July 7, 1923*

*To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana:*

Now comes the United States of America, by Edouard F. Henriques, special assistant in admiralty to the United States attorney for the Eastern District of Louisiana, its proctor, and feeling itself aggrieved by the final decree of this court, entered on the 28th day of April, 1923, dismissing this cause for want of jurisdiction of the court as a Federal court, hereby prays that an appeal may be allowed to it from the said decree to the Supreme Court of the United States, and in connection with this petition, petitioner herewith presents its assignment of errors.

Petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of the cause; and petitioner further prays that this appeal may be allowed returnable according to law, and that a transcript of the record, proceedings, and papers duly authenticated be sent to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith by petitioner may be reviewed,

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and if error be found, corrected according to the laws and customs of the United States.

(Signed) EDOUARD F. HENRIQUES,  
*Special Assistant in admiralty to the United States  
 Attorney, Proctor for Petitioner, Libellant.*

Assignment of errors having been duly presented with the foregoing petition, it is ordered that the appeal in the above-entitled case to the Supreme Court of the United States be, and is, hereby allowed as prayed.

(Signed) RUFUS E. FOSTER, Judge.  
 New Orleans, Louisiana, July 7th, 1923.

JULY 6TH, 1923.

Notice of appeal received and service of citation waived.

(Signed) TERRIERREY, RICE & YOUNG,  
*Proctors for Claimant.*

13 In the United States District Court

[Title omitted.]

*Assignment of errors. Filed July 7, 1923*

The United States of America, libellant and appellant in the above-entitled cause, in connection with its petition for appeal presented and filed herewith, presents this assignment of errors, as to which matters and things it says that in the record, decree, and proceedings herein there is manifest error, and that the District Court of the United States for the Eastern District of Louisiana erred in this, to wit:

First. In sustaining the exception to the jurisdiction of the United States District Court for the Eastern District of Louisiana.

Second. That the United States District Court for the Eastern District of Louisiana erred in holding that it has no jurisdiction as a Federal court over subject matter of this cause and of the original libel, and in dismissing this suit for want of jurisdiction in the court as a Federal court.

Wherefore, said libellant and appellant prays the honorable court to examine and correct the errors assigned, and for a reversal of judgment and decree of the United States District Court for the Eastern District of Louisiana, to the end that the jurisdiction of the United States District Court for the Eastern District of Louisiana will be maintained and that the Supreme Court of the United States direct the entering of a decree maintaining the jurisdiction of the United States District Court for the Eastern District of Louisiana as a Federal Court. And for all general relief.

(Signed) EDOUARD F. HENRIQUES,  
*Special Assistant in admiralty to the United States Attorney  
 for the Eastern District of Louisiana, proctor for libellant  
 and appellant.*

14 In United States District Court

[Title omitted.]

*Certificate of district judge certifying the question of jurisdiction.  
Filed July 7, 1923*

Be it remembered that on the 28th day of April, 1923, this cause came on to be heard upon the original libel and the exceptions filed by the respondent and exceptor to the same, on the ground that the District Court of the United States for the Eastern District of Louisiana had no jurisdiction as a Federal court over the subject matter of the cause, and the court, upon due consideration of said exception to the jurisdiction and after hearing arguments of the proctors for the respective parties, sustained the same on the sole ground that this court had no jurisdiction of the said cause as a Federal court, and accordingly directed that a decree be made and entered herein dismissing said original libel for want of jurisdiction;

And that on the 5th day of July, 1923, libelant having presented an affidavit in aid of the court and for the purpose of supplementing the description of the spur dike No. 5, involved in this libel, the court ordered said affidavit filed and made a part of this record, and this ruling of the court, with the supplemental affidavit as part thereof, is hereby certified to the Supreme Court of the United States.

Dated this 7th day of July, 1923.

(Signed)

RUFUS E. FOSTER,

*Judge of the United States District Court  
for the Eastern District of Louisiana.*

15 In United States District Court

[Title omitted.]

*Præcipe for transcript of record. Filed July 7, 1923*

Mr. H. J. CARTER,

*Clerk United States District Court,*

*Eastern District of Louisiana, New Orleans, Louisiana.*

DEAR SIR: In making the transcript of appeal taken by the United States of America to the Supreme Court of the United States please incorporate therein the following documents, to wit:

1. Libel.
2. Claim of the Pan American Petroleum and Transport Company, owner of the steamship "Panoil."
3. Exception to libel.
4. Extract of minutes of the court on hearing of exception.
5. Decree.

6. Affidavit of the district engineer of the United States and order thereon.

7. Petition for appeal and order.

8. Assignment of errors.

9. Certificate of court certifying the question of jurisdiction.

10. This præcipe for transcript of record.

Respectfully,

(Sgd.) E. F. HENRIQUES,

*Special Assistant in Admiralty to the United States Attorney for the Eastern District of Louisiana, Proctor for Libellant.*

July, 1923.

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In United States District Court

*Clerk's certificate*

I, Henry J. Carter, clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 15 pages contain and form a full, true, complete, and perfect transcript of the record, assignment of errors, and all proceedings in the case entitled United States of America versus steamship "Panoil," No. 17041 of the docket of said court, said transcript being made in accordance with præcipe, copied therein.

Witness my hand and the seal of said court at the city of New Orleans, La., this 20th day of July, A. D. 1923.

[SEAL.]

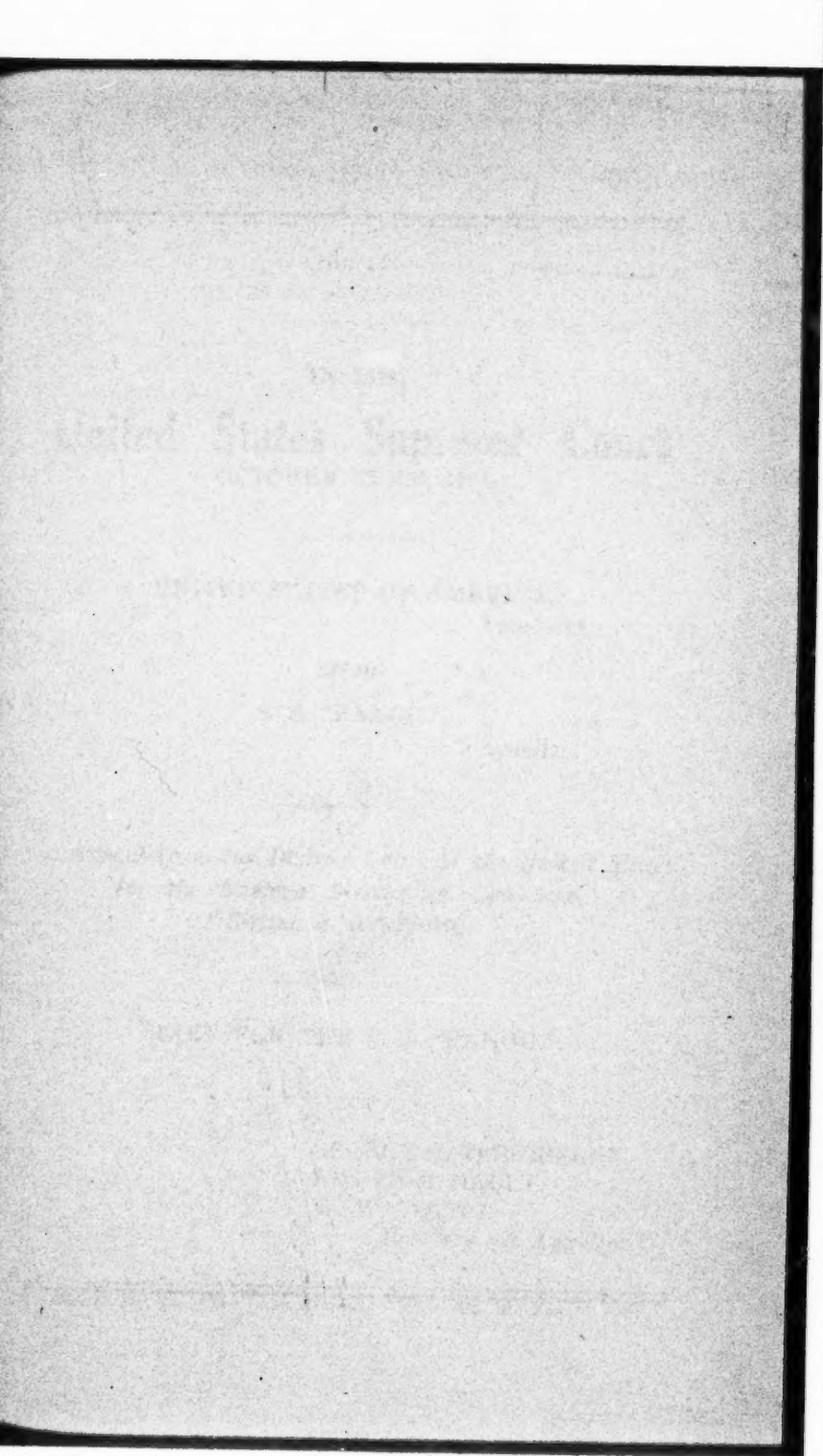
H. J. CARTER,

*Clerk.*

[Indorsement on cover:] File No. 29788. Eastern Louisiana, D. C. U. S. Term No. 189. The United States of America, appellant, vs. Steamship "Panoil." Filed August 2nd, 1923. File No. 29788.

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Office Supreme Court, U. S.  
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W. H. STANBURY  
CLERK

No. 129

IN THE  
**United States Supreme Court**  
OCTOBER TERM, 1924.

UNITED STATES OF AMERICA,  
Appellant,

versus

E. S. "PANOIL",  
Appellee.

*On Appeal from the District Court of the United States  
for the Eastern District of Louisiana,  
Sitting in Admiralty.*

BRIEF FOR THE E. S. "PANOIL"

GEORGE H. TENRIBERG  
JOSEPH M. RAULT,  
W. W. YOUNG,  
Proctors for Appellee.

No. 139

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IN THE

# United States Supreme Court

OCTOBER TERM, 1924.

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UNITED STATES OF AMERICA,  
Appellant,

*versus*

S. S. "PANOIL",  
Appellee.

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*On Appeal from the District Court of the United States  
for the Eastern District of Louisiana,  
Sitting in Admiralty.*

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BRIEF FOR THE S. S. "PANOIL"

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## STATEMENT OF THE CASE.

The facts as stated in appellant's brief are correct, with the exception of the assertion that the Spur Dike No. 5 was built by the Government as an *aid to navigation*; this is but a conclusion, the correctness of which is dependent upon other facts set out in the libel. We shall endeavor to show that this conclusion is incorrect.

## ARGUMENT.

## 1.

An examination of the cases decided by this court shows that, in order for a stationary structure to be the subject of admiralty jurisdiction, it must, first, constitute an aid to navigation, and, second, be entirely detached from the shore. *The Raithmoor*, 241 U. S. 166; *The Blackheath*, 195 U. S. 361; *Cleveland Terminal & Valley Railroad vs. Cleveland Steamship Company*, 208 U. S. 316; *The Troy*, 208 U. S. 321; *The Poughkeepsie*, 162 Fed. 494; *The Senator Rice*, 234 Fed. 101.

In *The Raithmoor* case, this court held that the admiralty had jurisdiction of a libel for recovery of damages done by a moving vessel to a beacon in the course of construction, situated in the Delaware River, and to be used to mark the channel. The court (opinion by Mr. Justice Hughes) said:

"This is not a case of a structure, which, at any time, was identified with the shore, but, from the beginning of construction, locality and design gave it a *distinctly maritime relation*." (Italics ours.)

And again the court said:

"We regard the *location and purpose* of this structure as controlling from the time the structure was begun." (Italics ours.)

The court then went on to say that:

"*The relation of the structure to the land was of the most technical sort, merely through the attachment to the bottom; it had no connection, either actual or anticipated, with commerce on*

land. It was simply to serve as an *aid to navigation*\*\*\*\*\*." (*Italics ours.*)

In *The Blackheath case*, a libel was filed against the vessel for damages caused by its running into a beacon in Mobile Bay, maintained as an aid to navigation in marking the channel. The District Court having declined jurisdiction in admiralty, an appeal was taken to this court, and the decree reversed. The beacon was described by Mr. Justice Holmes as "an instrument of navigation, and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea".

So that the structures dealt with in both *The Raithmoor* and *The Blackheath cases* were aids to navigation, purely and simply, and nothing else, and were detached from the shore and surrounded on every side by water.

## 2.

It is obvious that not every aid to navigation is subject to admiralty jurisdiction. A lighthouse on shore is perhaps the best illustration of this. It has never been contended that such structures are within the jurisdiction.

On the other hand, there are a number of cases dealing with structures surrounded on all sides by water over which jurisdiction has been denied, because they were not aids to navigation. Notable among these is *The Poughkeepsie*, 162 Fed. 494, decided by the District Court, Southern District of New York, and affirmed by this court without opinion, citing *Cleveland Terminal & Valley Railroad Company vs. Cleveland*



*Steamship Company*, 208 U. S. 316, and *The Troy*, 208 U. S. 321. In that case, libelant was making certain borings in connection with test holes in the Hudson River for the purpose of locating an aqueduct under the river with a view of conveying water from the west side to the east side of the river and thence to New York. The borings consisted of various lengths of wrought iron pipes placed into the bed of the river and surrounded by a platform on the surface. A libel was filed against the vessel for negligently running into the structure, and, declining jurisdiction, the court said:

"The project which the libelant was engaged in is not even suggestive of maritime affairs. It was supplying water to a city and the mere fact of the means being carried under the bed of the river, with extensions through the river to the surface, does not create any maritime right, *nor was it in any sense an aid to navigation*, which was the distinguishing feature of *The Blackheath*." (Italics ours.)

A similar question was presented in the case of *United Engineering and Contracting Company vs. New York, New Haven & Hartford Tug Transfer No. 5*, decided by the District Court, Eastern District of New York, in February, 1903, and reviewed in the case of *The Poughkeepsie*, *supra*. A rapid transit route from Manhattan to Brooklyn was being constructed, which necessitated boring test holes in the bottom of the river. A temporary staging or platform was erected in the river for drilling purposes. Jurisdiction of the suit for damage to the staging as a result of being run into by tugs was declined.

In the two foregoing cases, the ultimate object of the structures involved was entirely disconnected with maritime commerce or navigation. However, in the case of *The Senator Rice*, 234 Fed. 101, decided by the District Court, Eastern District of New York, the court declined jurisdiction of a libel for damages resulting from a vessel colliding with a drilling platform erected on piles driven into the bottom of a navigable stream and used for drilling in connection with the making of a channel for navigation. The court drew a clear distinction between an aid to navigation, such as a beacon, and the making of a deep waterway, which is an aid, not to navigation, but to commerce.

It clearly appears from the foregoing that the tests of location and purpose have been rigidly adhered to.

### 3.

In denying in the beginning of this brief, that the spur dike involved here was an aid to navigation, we are not unmindful of the fact that both the libel and affidavit allege that it was an aid to navigation. This allegation, however, is not one of fact, but one of conclusion, and particularly so since a sufficient description of the spur dike is given in the libel and affidavit to enable this court to reach its own conclusion. Moreover, the term "aid to navigation", as used in *The Raithmoor*, *The Blackheath*, *The Senator Rice*, and other cases cited herein, means a direct aid to navigation, an aid to one employing the art of ascertaining the geographical position of a ship and directing its course, such as a buoy, a beacon, a lighthouse, a bell, or a signpost, etc.; it does not refer to the means by which maritime com-

merce is carried on, such as docks, wharves, piers and levees, etc. In *The Blackheath* case, the object dealt with was a beacon referred to by the court as "an instrument of navigation", and as an "aid to navigation from ancient times subject to the admiralty". In *The Raithmoor* case this court referred to the beacon as an "aid to navigation" whose "locality and design gave it a distinctly maritime relation". But in dealing with structures not directly aiding those in charge of the vessel to ascertain its position or safely direct its course, this court has refused to use the term "aid to navigation". The case of *Cleveland Terminal & Valley Railroad Company vs. Cleveland Steamship Company* involved the damage caused by a vessel colliding with a shore dock, a bridge and protection piling, and this court, in regard to these, said:

"None of these structures were *aids to navigation in the maritime sense*, but extensions of the shore and aids to commerce on land as such."  
(Italics ours.)

A clear illustration of the proper meaning of the term "aid to navigation" is given in *The Senator Rice*, *supra*, involving a structure resting on piles in navigable waters used for making tests preliminary to the making of a deepwater channel. The court refused to apply the term "aid to navigation" to such a structure, saying:

"The rule apparently now well established is to the effect that a platform erected upon posts or piles and giving the character of a dock or land structure, even though entirely isolated from the land and standing in navigable water, is part of the land itself, and that acts occurring thereon

are not within the admiralty jurisdiction. *Nor was the mere fact that the drilling was being done in connection with the making of a channel for navigation sufficient of itself to treat this entire plant as an aid to navigation, as was the beacon or buoy in the case of The Blackheath \* \* \* and in the recent case of The Raithmoor.*" (Italics ours.)

The spur dike involved here falls short of being an aid to navigation, both because its ultimate object, the making of a deep channel, is not itself an aid to navigation, and because the building of the dike and the realization of a deep water channel are too remotely connected, there being several intervening causes and effects. The affidavit filed by libelant says:

"Said dike is driven into the bed of said river, and extends out about 700 feet from the east bank, approximately at right angles to the channel in a westerly direction and that the immediate effect of said dike is that by slackening the current in the river, it induces deposits of sediment behind it, eventually building out the banks, thus narrowing the river and causing the current to scour out and deepen the channel, thus aiding navigation."

#### 4.

The spur dike fails in the second jurisdictional test, in that, unlike the beacons in *The Raithmoor* and *Blackheath* cases, it is not detached from the shore and is not entirely surrounded by water; on the contrary, libelant's affidavit shows that it is attached to the levee and extends out into the river, that it consists of a "crib-

work of round piles, hewn walings and sawn cross bars, all securely bolted together with a curtain of round piles bolted against the upstream face." Plainly, therefore, it is but an extension of the levee itself, differing only in construction, in that it is built of piles filled in, instead of being built of earth as are the levees. The levee, and dike branching out from it, form a continuous piece of land; the dike is no more surrounded by water than the levee.

If this spur dike is within the admiralty jurisdiction, then the whole levee system of the lower Mississippi is also within the jurisdiction. The levees at, and in the vicinity of, New Orleans, serve a dual purpose. Primarily, they are to prevent the water from overflowing the land, and, secondarily, they are to preserve a deepwater channel for maritime commerce. But in the lower stretches of the river, including Pilot Town and below, the land behind the levees, consisting of inundated swamp land, is entirely worthless, and, at these places, continuing on down to the mouths of the river, the Government maintains the levees solely for the purpose of the deepwater channel, the theory being that, by confining the water between narrow limits, it will scour out its own bottom. The purpose of the spur dike is identical with that of the levees: to enable the flow of the water to scour out the bottom; it is built to give added concentration in a particular location. We, therefore, say that, if the spur dike is the subject of admiralty jurisdiction, the entire levee system of the lower Mississippi would likewise be subject to the jurisdiction. It has never been contended that jurisdiction in admiralty reaches this far.



**CONCLUSION.**

The decree of the District Court dismissing the libel for want of jurisdiction should be affirmed with costs.

Respectfully submitted,

GEORGE H. TERRIBERRY,

JOSEPH M. RAULT,

W. W. YOUNG,

*Proctors for Appellee.*